



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/20/04	Bill No:	AB 2858
Tax:	Munitions	Author:	Ridley-Thomas
Board Position:		Related Bills:	

BILL SUMMARY

This bill would impose a 10% fee upon munitions sold at retail and a 5% fee upon handguns sold at retail.

ANALYSIS

Current Law

Under existing law, a state and local sales and use tax is imposed on the sale or use of tangible personal property in this state, including munitions and handguns. Currently, the total combined sales and use tax rate is between 7 ¼ percent to 8 ½ percent, depending on the location in which the merchandise is sold. The Board does not collect any additional taxes or fees on the sale or use of munitions and handguns.

The Department of Justice administers a fee imposed on gun sales. The Dealer Record of Sale (DROS) fee is imposed on gun purchasers and collected by the selling dealer. The fee is currently \$14, and is used to cover the costs of mandatory background checks. There is also a required \$1.00 Firearms Safety Testing fee and a \$5.00 Safety and Enforcement fee imposed on gun sales.

Proposed Law

This bill would add Chapter 2.8 (commencing with Section 12330) to Title 2 of Part 4 of the Penal Code to impose a fee as follows:

- 10 percent of the retail sales price for each munition sold at retail on or after January 1, 2006, or purchased outside this state that are intended to be stored or used in this state.
- 5 percent of the retail sales price for each handgun sold at retail on or after January 1, 2005.

This bill would provide an exemption from the proposed fee for the following:

- Any munition purchased by any peace officer required to carry a firearm while on duty, or by any governmental law enforcement agency employing that officer, for use in the normal course of employment.
- Ammunition sold to any person holding a valid California hunting license that is purchasing ammunition intended to be used in a rifle or shotgun.
- A transaction conducted pursuant to Section 12082 or 12084 in order to comply with subdivision (d) of Section 12072. These sections refer to private party handgun sales that require the assistance of a licensed firearms dealer (Section 12082) or a law enforcement agency (Section 12084).
- A transaction that complies with an exemption from the requirements of subdivision (d) of Section 12072. Such exemptions include gun buy back programs, transfers by

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government agencies to museums, transfers between licensed importers, gift to immediate family members, or short term loans to a known person.

- A transaction conducted pursuant to paragraph (2) of subdivision (f) of Section 12072. This provision requires any person who imports a handgun into this state to either report the information about the firearm and the owner to the Department of Justice or transfer or sell the firearm to another individual, licensed firearms dealer, or sheriff or police department.

This bill provides the following definitions for key terms:

- “Munition” means either a finished munition product consisting of a projectile with its fuse, propelling charge, or primer, or a primer component, as applicable. “Munition” does not include a BB or pellet commonly used in an air rifle or pistol, or blank munitions which lack a projectile.
- “Handgun” means a handgun, as defined in Section 12001, that is on the approved list pursuant to Section 12131.

This bill would require that the proposed fee be administered by the Board. All amounts required to be paid would be paid to the Board in the form of remittances that are payable to the Board and are separate from the remittance of any other tax. The Board would be required to transmit those amounts to the Treasurer to be deposited in the State Treasury to the credit of the Firearm Victims' Reimbursement Fund, which this bill would create. The Firearm Victims' Reimbursement Fund may be used, upon appropriation by the Legislature, as follows:

- To the Board for its cost of implementation and administration of the fee.
- To the California Victims Compensation and Government Claims Board for the board's cost of implementation and administration.
- To pay claims as administered by the California Victims Compensation and Government Claims Board for compensating persons who are injured by firearms and who suffer an uncompensated financial loss.

This bill would provide that if the amount credited to the Firearm Victims' Reimbursement Fund exceeds the amount necessary to cover administration costs and pay claims for uncompensated costs of firearm injuries, the Board shall temporarily adjust for the following one year period, the fee to be charged on the retail sale of munitions and handguns to an amount estimated to deplete any surplus in the fund during the next calendar year.

This bill would provide that the Board shall adopt regulations necessary to implement the provisions of this bill.

Background

In 1993, two bills (AB 856, Tucker and SB 1129, Roberti) were introduced which would have imposed an additional sales tax on both firearms and ammunition. Both failed to advance out of their house of origin.

In 1994, SB 42X (Hughes) would have imposed a 10 percent sales tax on ammunition, while AB 24X (Eastin) and AB 3076 (Bates) proposed an excise tax of 15 cents per round of ammunition. All three bills failed to advance out of their house of origin.

Senate Constitutional Amendment 12 (Perata), introduced during the 2002 Legislative Session, would have placed a constitutional amendment before voters to impose a tax upon retailers at the rate of 5 cents for each munition sold at retail in this state. SCA 12 failed passage in the Senate Revenue and Taxation Committee.

Assembly Bill 992 (Ridley-Thomas), introduced during the 2003 Legislative Session, would have imposed a fee of 10 cents on each munition sold at retail. AB 992 failed to advance out of its house of origin.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to provide funding to offset financial losses incurred by firearm injury victims.
2. **Different start dates.** The proposed fee on munitions would become operative January 1, 2006. The proposed fee on handguns would become operative January 1, 2005. It is not clear why the fees would start on different dates.
3. **Definition of handguns.** The proposed fee would apply to sales of handguns, as defined in Section 12001. Section 12001 defines a handgun as any pistol, revolver or firearm capable of being concealed upon the person and has a barrel less than 16 inches in length. This would exclude rifles and shotguns from the proposed fee.
4. **Exemption.** This bill would allow an exemption from the fee for any munition purchased by a peace officer required to carry a firearm while on duty, or by any governmental law enforcement agency employing that officer, provided the munition is purchased for use in the normal course of employment. This bill would also allow an exemption for any ammunition purchased by a licensed hunter for use in a rifle or shotgun. It is unclear why the bill uses the term ammunition in subdivision (d)(2), while it uses the term munition throughout the rest of the bill.

This bill does not provide an exemption for handguns purchased by peace officers or licensed hunters.

5. **Costs may exceed revenue.** This bill would create a new fee program to be administered by the Board. The provisions in this bill provide that the Board would be reimbursed for the costs of implementation and administration through the revenues generated by the fee. Since the implementation and administration costs have not been estimated by the Board, it is not known if the revenue generated by the proposed fee will provide the Board with sufficient funding to administer the fee. The Board estimates annual revenue generated by the proposed fee to be \$1.2 million. Based on this annual revenue amount, it is likely the Board's administration costs would exceed the revenue generated.
6. **Board would be required to adjust the fee.** This bill provides that the proposed fee would be 10 percent of the retail sales price of munitions and 5 percent of the retail sale price of handguns. This bill also provides that if amounts credited to the Firearm Victims' Reimbursement Fund (Fund) exceed the amount necessary to pay claims for which the Fund is established, the Board shall temporarily adjust, for the following one year period, the fee to be charged on the retail sale of munitions and handguns so that any surplus in the Fund would be depleted during the next calendar year. The bill does not provide how the adjustment to the fee should be allocated between the two fees (munitions and handguns) and the bill does not indicate on what date the Board must make this determination. However, this bill

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does provide that the Board shall adopt regulations necessary to implement the provisions in this bill.

7. **Bill could set a precedent.** Imposing varying fees on specific commodities complicates tax administration and could set a precedent for establishing multiple fees on other classes of tangible personal property. This results in increasing administrative costs to the Board and an increased record-keeping burden on fee payers.
8. **Suggested technical amendment.** As currently written, this bill would impose a fee upon munitions and handguns sold at retail. With this language, it is unclear who would be liable for the payment of the fee (retailer or consumer). Based on other language in the bill, it is assumed that the proposed fee would be imposed upon the retailer, except in situations where the munition is purchased from a point outside this state, in which case the proposed fee would be imposed upon the consumer. It is recommended that this section be amended to read as follows:

12330. (a)(1) There shall be imposed a fee upon the retailer of all munitions ~~sold at retail~~ at the rate of 10 percent of the retail sale price for each munition sold at retail in this state on or after January 1, 2006.

(3) There shall be imposed a fee upon the retailer of all handguns ~~sold at retail~~ at the rate of 5 percent of the retail sale price for each handgun sold at retail in this state on or after January 1, 2005.

Additionally, the terms "retail sale" and "retailer" are not defined in this bill. Lack of definitions for these key terms could lead to confusion. It is recommended that this section be amended to add the following:

(c)(3) For purposes of this section, "retail sale" has the same meaning as provided in Section 6007 of the Revenue and Taxation Code.

(4) For purposes of this section, "retailer" has the same meaning as provided in Section 6015 of the Revenue and Taxation Code.

9. **Administrative provisions.** In order for the Board to administer the proposed fee under provisions consistent with other Board-administered fees, it is suggested that subdivision (b) of proposed Section 12330 be amended to provide the following:

For purposes of this chapter, the board may collect the fees pursuant to the Fee Collection Procedures Law (Part 30, commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board. The Fee Collection Procedures Law was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund and appeals provisions, as well as providing the Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

It is also suggested that the bill be amended to specify a due date for the fee and return and to authorize the payment of refunds on overpayments of the fee. Board staff is willing to work with the author's office in drafting appropriate amendments.

- 10. The Board could not administer a new fee program with a January 1, 2005, effective date without risk to its Revenue Database Consolidation (RDC) Project.** Starting in April 2004 and running through the remainder of the 2004 calendar year, the Board will be implementing the RDC project. RDC involves extensive changes to the Integrated Revenue Information System (IRIS), the Board's primary tax administration system. RDC implementation and stabilization efforts will occupy significant Board staff resources for the rest of 2004.

The Board has already made significant modifications to the RDC project as a result of two major pieces of legislation signed into law* in 2003. Making such modifications to the RDC code is a very challenging and cumbersome process.

This bill would create a new fee program as of January 1, 2005. This would require programming to the Board's computer system at the end of 2004, which is during the final stages of the RDC project. Making modifications at the end of the system development, which this bill would require, would put the Board's RDC project at substantial risk. Because of this risk, the Board can not add a new tax or fee program to its system until early 2005. It is therefore suggested that the bill be amended to make the fee operative *no earlier* than July 1, 2005.

- 11. This bill should contain a specific appropriation to the Board.** This bill proposes a fee to be imposed on or after January 1, 2005, which is in the middle of the state's fiscal year. Although this bill provides that the Board would be reimbursed for administration of the proposed fee from the fee revenues, in order to begin to develop the feepayer base, reporting forms, and hire appropriate staff, an adequate appropriation would be required to cover the Board's administrative start-up costs that would not be identified in the Board's 2004-05 budget.

COST ESTIMATE

The Board would incur non-absorbable costs to adequately develop and administer a new fee program. These costs would include identifying and registering fee payers, developing computer programs, mailing and processing returns and payments, conducting audits, developing regulations, training staff, and answering inquiries from the public. A cost estimate of this workload is pending.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

This bill would impose a fee of 10 percent upon all munitions sold at retail and a fee of 5 percent upon all handguns sold at retail. This bill exempts from those fees munitions and handguns purchased by any peace officer required to carry a firearm while on duty, or by any governmental law enforcement agency employing that officer, for use in the normal course of employment. Also exempt from those fees are purchasers who have a valid California hunting license and are purchasing munitions intended to be used in rifles and shotguns.

* AB 71 (Stats. 2003, Ch. 890) and SB 1049 (Stats. 2003, Ch. 741)

As proposed to be amended, this fee will not be imposed on purchasers who have a valid California hunting license and are purchasing handguns and handgun munitions.

According to the National Sporting Goods Association (NSGA), total sales of munitions in California for 2002 are estimated to be \$100.6 million. Total sales of handguns are estimated to be \$55.4 million. According to the 2001 National Survey of Hunting, Fishing, and Wildlife-Associated Recreation, and according to the corresponding NSGA 2001 data, munitions purchased by hunters comprise 82 percent of all munitions sales and 77 percent of all handgun sales.

Law enforcement agencies in the state use munitions in varying amounts. A survey of some of those agencies determined that sales of munitions to police and police agencies are estimated to be 10 percent of all munitions sales. Additionally, it is estimated that police and police agencies purchases comprise 10 percent of all handgun sales. The following table shows total sales subject to the fees.

Product	Calif. Sales	Sales Hunters	Sales Police	Sales Subject to Fee	Est. Fees @ 10% and 5%
(in millions)					
Ammunition	\$100.6	\$82.5	\$10.1	\$ 8.0	\$0.8
Handguns	\$55.4	\$42.7	\$5.5	\$ 7.2	\$0.4

Revenue Summary

The revenue increase from imposing a fee on munitions and handgun sales is estimated to be \$1.2 million (\$0.8 million + \$0.4 million).

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